

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION  
NO. 1:17-cv-814

Joshua D. Johnson,

Plaintiff,

vs.

UNUM Life Insurance Co. of America,

Defendant.

COMPLAINT

PRELIMINARY STATEMENT<sup>1</sup>

Joshua D. Johnson, brings this ERISA action against Unum Life Insurance Company of America (“Defendant”) to secure long term disability benefits to which he is entitled under a disability benefits policy underwritten and administered by Unum Life Insurance Company of America. This claim is based upon Plaintiff’s employment with Adzerk, Inc.

Plaintiff suffers from small fiber peripheral neuropathy, complication of Sjogren’s syndrome, chronic pain syndrome, and IBS at a level of severity that have necessitated the implantation of a spinal cord stimulator and prevented him from performing the usual and customary duties of his own occupation or any other employment on a regular basis since June 15, 2015. As a result of his disability, he was forced to leave his employment and seek short term disability (“STD”) and long term disability benefits (“LTD”) from Defendant.

PARTIES

1. Plaintiff, Joshua D. Johnson, is a citizen and resident of Chapel Hill, North Carolina.
2. Defendant, Unum Life Insurance Company of America, is a properly organized business entity doing business in the state of North Carolina in the Middle District of North Carolina. The Long Term Disability Plan (the “Plan”) issued in this case was issued by Unum Life Insurance Company of America to Adzerk, Inc..

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<sup>1</sup> This Preliminary Statement gives a synopsis of Plaintiff’s claim and is not intended as an allegation to be answered by Defendant.

## JURISDICTION AND VENUE

3. This court has jurisdiction to hear this claim pursuant to 28 U.S.C. §1331 in that the claim arises under the laws of the United States. Specifically, Plaintiff brings this action to enforce his rights under ERISA as allowed by 29 U.S.C. §1132.

4. Venue in the Middle District of North Carolina is appropriate by virtue of Adzerk, Inc. doing business in this district.

## FACTUAL ALLEGATIONS

5. At all times relevant to this action, Plaintiff has been a covered beneficiary under a group STD and LTD benefits policy issued by Unum Life Insurance Company of America through his former employer, Adzerk, Inc..

6. Under the terms of the policy, Unum Life Insurance Company of America administered the Plan and had sole authority to grant or deny benefits to applicants.

7. Defendant, Unum Life Insurance Company of America, has a fiduciary obligation to Plaintiff to administer the Plan and policy fairly and to furnish long term disability benefits according to the terms of the policy, subject to conditions and limitations not applicable to this action.

8. Plaintiff is a 36-year-old male who worked for Adzerk, Inc. from October 20, 2014 until June 15, 2015 as a senior software engineer. As of June 15, 2015, the combined effect of Plaintiff's impairments made him incapable of performing any substantial work activity on a sustained basis, i.e., 8 hours per day, 40 hours per week. He thereafter applied to Unum Life Insurance Company of America for short term disability benefits and long term disability benefits which were approved on November 10, 2016. Defendant notified Plaintiff that his long term disability benefits would terminate as of November 10, 2016. The Plaintiff filed timely administrative appeal and submitted overwhelming evidence that his disability has not ceased. On July 14, 2017, Defendant denied Plaintiff's appeal thus exhausting his administrative remedies.

9. Plaintiff submitted medical evidence to Defendant conclusively establishing that he continued to be disabled within the applicable Plan documents, including documents from Nandan Lad, M.D., Ph.D., Assistant Professor of Neurosurgery, Duke University School of Medicine and Alexandre W. Huin, M.D., Plaintiff's Board certified treating family physician, that supported a finding of ongoing disability under both the own occupation and any occupation definition of the policy. The Defendant has breached his fiduciary duty and determined that Plaintiff was capable of returning to work activity and wrongfully denied Plaintiff's request for long term disability benefits.

10. Plaintiff has now exhausted his administrative remedies, and his claim is ripe for judicial review pursuant to 29 U.S.C. § 1132.

WRONGFUL DENIAL OF BENEFITS  
UNDER ERISA, 29 U.S.C. §1132 FOR THE FOLLOWING REASONS:

11. Defendants have wrongfully denied LTD benefits to Plaintiff in violation of the Plan provisions and ERISA for the following reasons:

- a. Plaintiff is totally disabled, in that he cannot perform the material duties of his own occupation, and he cannot perform the material duties of any other occupation which his education, training or experience would reasonably allow;
- b. Defendant failed to accord proper weight to the evidence in the administrative record showing that Plaintiff is totally disabled;
- c. Defendant's interpretation of the definition of disability contained in the policy is contrary to plain language of the policy, unreasonable, arbitrary and capricious; and
- d. Defendant has violated its contractual obligation to furnish short term and long term disability benefits to Plaintiff.

WHEREFORE, Plaintiff prays the Court:

1. Grant Plaintiff declaratory and injunctive relief, finding that he is entitled to long term disability benefits under the terms of the Adzerk, Inc. policy, and that the Defendant, Unum Life Insurance Company of America, be ordered to pay long term disability benefits according to the terms of the Plan until such time as Plaintiff is no longer disabled or reaches the age of 65.
2. Enter an order awarding Plaintiff all reasonable attorney fees and expenses incurred as a result of Defendants' wrongful denial in providing coverage.
3. Enter an award for such other relief as may be just and appropriate.

Dated this 12<sup>th</sup> day of September, 2017.

/s/ Robert A. Whitlow  
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